

**UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO**

In re:

THE FINANCIAL OVERSIGHT AND
MANAGEMENT BOARD FOR PUERTO RICO,

as representative of

THE COMMONWEALTH OF PUERTO RICO, *et al.*,

Debtors.¹

PROMESA
Title III

No. 17 BK 3283-LTS

(Jointly Administered)

**INFORMATIVE MOTION OF AMBAC ASSURANCE CORPORATION
REGARDING STATEMENTS CONCERNING MILLIMAN ACTUARIAL REPORTS**

To the Honorable United States District Judge Laura Taylor Swain and the Honorable United States Magistrate Judge Judith Gail Dein:

Ambac Assurance Corporation (“Ambac”) submits this informative motion in response to the *Informative Motion of the Financial Oversight and Management Board for Puerto Rico Regarding Statements of Ambac Assurance Corporation Concerning Milliman Actuarial Reports* (the “Board’s Motion” (ECF No. 17043²)), and respectfully states as follows:

¹ The Debtors in these Title III Cases, along with each Debtor’s respective Title III case number and the last four (4) digits of each Debtor’s federal tax identification number, as applicable, are the (i) Commonwealth of Puerto Rico (Bankruptcy Case No. 17 BK 3283-LTS) (Last Four Digits of Federal Tax ID: 3481); (ii) Puerto Rico Sales Tax Financing Corporation (“COFINA”) (Bankruptcy Case No. 17 BK 3284-LTS) (Last Four Digits of Federal Tax ID: 8474); (iii) Puerto Rico Highways and Transportation Authority (“HTA”) (Bankruptcy Case No. 17 BK 3567-LTS) (Last Four Digits of Federal Tax ID: 3808); (iv) Employees Retirement System of the Government of the Commonwealth of Puerto Rico (“ERS”) (Bankruptcy Case No. 17 BK 3566-LTS) (Last Four Digits of Federal Tax ID: 9686); (v) Puerto Rico Electric Power Authority (“PREPA”) (Bankruptcy Case No. 17 BK 4780-LTS) (Last Four Digits of Federal Tax ID: 3747); and (vi) Puerto Rico Public Buildings Authority (“PBA”) (Bankruptcy Case No. 19-BK-5523-LTS) (Last Four Digits of Federal Tax ID: 3801).

² “ECF No.” refers to documents filed in Case No. 17-BK-3283-LTS, unless otherwise noted.

1. Over the past four years, Ambac has diligently sought information from the Financial Oversight and Management Board for Puerto Rico (the “Board”) and the Puerto Rico Fiscal Agency and Financial Advisory Authority (“AAFAF,” and together with the Board, the “Government Parties”) concerning the actuarial reports produced by the Commonwealth’s actuary, Milliman, Inc. (“Milliman”).

2. In the course of Rule 2004 discovery, Ambac requested that the Government Parties produce Milliman actuarial reports for 2018 (the “2018 Reports”). After AAFAF informed Ambac that the reports had not been finalized, Ambac requested updates regarding the timing of the release of the 2018 Reports. AAFAF repeatedly represented that the 2018 Reports were forthcoming. (*See, e.g.*, Ex. 1 (Ltr. from M. Dale, Esq. and M. Pocha, Esq., dated December 14, 2020, stating that “the 2018 reports [are] currently expected by February 2021”); Ex. 2 (Ltr. from M. Dale, Esq. and M. Pocha, Esq., dated April 9, 2021, stating that AAFAF expected the 2018 Reports to be released “sometime in May 2021”).) The 2018 Reports still have not been published or produced.

3. Ambac also sought (and was granted) leave to seek discovery directly from Milliman (ECF Nos. 15342, 15589). In meet and confers with Milliman’s counsel, Ambac asked whether Milliman had additional information regarding when the 2018 Reports would become public. Milliman’s counsel represented that the determination of when the 2018 Reports would be published was out of Milliman’s control and that Milliman would not produce the 2018 Reports, based on instructions from its government client, which Ambac understood to include the Board based on the Board’s role as the sole representative of the debtors in the Title III proceedings, the core nature of the valuation reports, and the Board’s active role in the pension discovery meet and confers.

4. On June 3, 2021, Ambac stated in the *Objection of Ambac Assurance Corporation, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claim Asserted by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth's Title III Case* (ECF No. 16884, the “Pension Claim Objection”) that the 2018 Reports had not been published or produced in discovery. Based on the statements from Milliman’s counsel, Ambac also stated that “Milliman has represented that the determination to hold back the Milliman Reports has been made by the Board.” (*Id.* at ¶ 15.)

5. On June 8, 2021, based on the statements from Milliman’s counsel, Ambac stated in *Ambac Assurance Corporation’s Status Report Concerning Ambac’s Urgent Motion to Compel Milliman Inc. to Comply with Subpoena Issued Pursuant to Court’s January 13, 2021 Order Authorizing Rule 2004 Discovery* (ECF No. 16904, the “Milliman Motion to Compel”), that Milliman noted “that the Board would make the determination when [the 2018 Reports] will be published.” (*Id.* at ¶ 10.)

6. On June 10, 2021, the Board sent counsel for Ambac a letter requesting the “factual basis for [Ambac’s] assertions” that “the Oversight Board has caused Milliman to withhold publishing valuation reports for 2018 (the ‘Milliman Reports’)” in the Pension Claim Objection and the Milliman Motion to Compel. (ECF No. 17043-1.) The Board denied that it is withholding or otherwise delaying publication of the 2018 Reports. (*Id.*)

7. Ambac responded by letter on June 11, 2021, explaining that “Ambac’s understanding that the 2018 Reports are being withheld from production by the Board is based on statements made by Milliman’s counsel in two separate meet-and-confers held on February 17, 2021 and May 26, 2021, neither of which was attended by attorneys for the Board[.]” (ECF No. 17043-2.)

Counsel for Ambac recall Milliman's counsel explicitly stating that the "government" was holding back the 2018 Reports. (*See id.*)

8. In an email dated June 14, 2021, Milliman's counsel stated that he had informed Ambac that "the publication of the 2018 valuation reports was something out of Milliman's control, that I didn't know if or when Milliman would have more work to do on the 2018 report, and that you would need to ask Milliman's government client for more details." (ECF No. 17043-4.) Milliman's counsel further stated that "Milliman's client had expressed concern about the 2018 draft report being produced before it has been finalized." (*See id.*)

9. On June 15, 2021 Ambac requested a telephone call with the Board to discuss the issue.

10. On June 16, 2021, Ambac informed the Board that Ambac was prepared to correct the record to make clear that Milliman had represented that the determination to hold back the 2018 Reports was made by the Commonwealth government rather than the Board, and further suggested that the parties submit a joint informative motion to clarify the record. The Board rejected Ambac's suggestion.

11. Thus, Ambac hereby corrects the statements cited by the Board as follows:

- a. On June 3, 2021, in the *Objection of Ambac Assurance Corporation, Pursuant to Bankruptcy Code Section 502 and Bankruptcy Rule 3007, to Claim Asserted by the Official Committee of Retired Employees of the Commonwealth of Puerto Rico Appointed in the Commonwealth's Title III Case*, Ambac (through Milbank LLP as counsel) told the Court, "Milliman has represented that the determination to hold back the Milliman Reports has been made by the ~~Board~~ **government**." ECF No. 16884 in Case No. 17- bk-3283, ¶ 15.
- b. On June 8, 2021, in *Ambac Assurance Corporation's Status Report Concerning Ambac's Urgent Motion to Compel Milliman Inc. to Comply with Subpoena Issued Pursuant to Court's January 13, 2021 Order Authorizing Rule 2004 Discovery*, Ambac (through Glenn Agre Bergman & Fuentes LLP as counsel) told the Court, "Milliman [noted] the ~~Board~~ **government** would make the determination when they [i.e., the Milliman Reports] will be published." ECF No. 16904 in Case No. 17-bk-3283, ¶ 10.

12. Based on discussions with the Board and Milliman's counsel, Ambac now understands that Milliman has completed its work on the 2018 Reports and that the 2018 Reports have been provided to the Commonwealth's auditors.

13. The Board has represented that it is not in possession and does not control the production of the 2018 Reports. Despite the fact that Ambac has been requesting production of the 2018 Reports since at least July of 2020, and notwithstanding the Board's power to request a copy of the 2018 Reports under PROMESA, it is now apparent, based on the Board's representations, that the Board certified the current Commonwealth fiscal plan and is in the process of certifying a Commonwealth budget for fiscal year 2022 based on information that is not only outdated, but is also not the most current information available. *See* PROMESA §104(c)(2) ("At the request of the Oversight Board, the Oversight Board shall be granted direct access to such information systems, records, documents, information, or data as will enable the Oversight Board to carry out its responsibilities under [PROMESA].").

14. Ambac continues to maintain that the 2018 Reports, and all underlying project files thereto, should be produced immediately. Given the massive size of the Commonwealth's pension liability, it is imperative that the most accurate and up-to-date information is relied upon in the Commonwealth's budgets and fiscal plans, which in turn have substantial ramifications for any proposed plan of adjustment. The Board has stated that it "wants the Milliman Reports produced." (ECF No. 17043-5.) Indeed, all parties (and the people of Puerto Rico more generally) should be aligned in having the most accurate pension information and claim estimates. We are optimistic that going forward the Board will use all of its legal authority to procure and publish the 2018 Reports.

WHEREFORE, Ambac respectfully requests that the Court take notice of the foregoing.

Dated: June 16, 2021
San Juan, Puerto Rico

FERRAIUOLI LLC

By: /s/ Roberto Cámara-Fuertes
Roberto Cámara-Fuertes (USDC-PR No. 219002)
Sonia Colón (USDC-PR No. 213809)
221 Ponce de León Avenue, 5th Floor
San Juan, PR 00917
Telephone: (787) 766-7000
Facsimile: (787) 766-7001
Email: rcamara@ferraiuoli.com
scolon@ferraiuoli.com

MILBANK LLP

By: /s/ Atara Miller
Dennis F. Dunne (admitted *pro hac vice*)
Atara Miller (admitted *pro hac vice*)
Grant R. Mainland (admitted *pro hac vice*)
John J. Hughes, III (admitted *pro hac vice*)
Jonathan Ohring (admitted *pro hac vice*)
55 Hudson Yards
New York, NY 10001
Telephone: (212) 530-5000
Facsimile: (212) 530-5219
Email: ddunne@milbank.com
amiller@milbank.com
gmainland@milbank.com
jhughes2@milbank.com
johring@milbank.com

GLENN AGRE BERGMAN & FUENTES LLP

By: /s/ Andrew K. Glenn
Andrew K. Glenn (admitted *pro hac vice*)
Olga Fuentes-Skinner (admitted *pro hac vice*)
Marissa E. Miller (admitted *pro hac vice*)
55 Hudson Yards – 19th Floor
New York, New York 10001
Telephone: (212) 358-5600
Email: aglenn@glennagre.com
ofuentes@glennagre.com
mmiller@glennagre.com

Attorneys for Ambac Assurance Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this same date a true and exact copy of this notice was filed with the Clerk of Court using the CM/ECF system, which will notify a copy to counsel of record.

/s/ Roberto Cámara-Fuertes

Roberto Cámara-Fuertes (USDC-PR No. 219002)

221 Ponce de León Avenue, 5th Floor

San Juan, PR 00917

Telephone: (787) 766-7000

Facsimile: (787) 766-7001

Email: rcamara@ferraiuoli.com